

FCC MAIL SECTION

Before the
Federal Communications Commission
FEB Washington, D.C. 20554

DISPATCHED BY
MM Docket No. 93-71

In the Matter of

Amendment of Section 73.202(b), RM-8134
Table of Allotments
FM Broadcast Stations
(Wickenburg, Arizona).

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: February 7, 1995; Released: February 10, 1995

By the Chief, Policy and Rules Division:

1. The Commission has before it the Petition for Reconsideration filed by Vulture Peak Restoration Group ("Vulture") of the *Report and Order* ("R&O")¹ in the above captioned proceeding. The R&O substituted Channel 231C3 for Channel 229A at Wickenburg, Arizona, and modified the license for Station KMEQ(FM), Wickenburg, to specify operation on the upgraded channel. Circle S Broadcasting Co., Inc. ("Circle"), licensee of Stations KTIM(AM) and KMEQ(FM), Wickenburg, filed an opposition. No other comments were received.

2. *Background.* This proceeding originated with the filing of a rulemaking petition by Circle to substitute Channel 231C3 for Channel 229A at Wickenburg and to modify its license accordingly. Vulture, an organization of homeowners and citizens residing near Circle's current transmitting tower for Stations KTIM(AM) and KMEQ(FM), opposed Circle's rulemaking petition on two grounds. First, it raised questions regarding the environmental impact of the current tower for Stations KTIM(AM) and KMEQ(FM) as well as the proposed tower for Station KMEQ(FM) which would be built at a different site to implement the upgrade. Second, Vulture alleged that Station KMEQ(FM) at its current site is causing interference to television channels 8 and 10 and that this interference is likely to intensify if the rulemaking proposal were granted. As a result of both of these concerns, Vulture requested that Circle's proposed upgrade of its allotment be conditioned upon the removal of its existing 499 foot tower for Stations KTIM(AM) and KMEQ(FM) and its relocation to an area beyond an 11.6 mile radius of Wickenburg.

3. In the R&O, the Chief, Allocations Branch, rejected Vulture's arguments and granted Circle's upgrade proposal. Specifically, the Chief determined that Vulture's concerns

regarding the environmental impact of Station KTIM(AM)'s current tower and its dismantling were inappropriate for consideration since the Commission had authorized the tower's construction in 1991. Likewise, environmental concerns with the proposed tower would be appropriate for consideration at the application, as opposed to the allotment, stage. Second, the Chief determined that Vulture's allegations regarding interference on television Channels 8 and 10 were speculative in the absence of any technical demonstrations by the affected licensees.

4. *Petition for Reconsideration.* In its petition, Vulture alleges that the Chief, Allocations Branch, should not have dismissed its arguments about interference at the stations' current site as speculative. In support of this contention, Vulture submits a letter from a communications engineer describing the nature and extent of the interference on television channels 8 and 10 that Vulture claims is caused by Station KMEQ(FM) at its existing tower. Vulture also submits two additional letters from television service personnel that it claims further substantiates the interference claim. Vulture contends that this information was not available when it submitted its comments in this proceeding and that these letters, as well as its prior submissions, warrant reconsideration of the *Report and Order*.

5. In opposing comments, Circle argues that the letters submitted by Vulture are basically complaints, have no probative value, and are late-filed. Circle also points out that on November 24, 1993, it responded to a Commission letter concerning a complaint that KMEQ(FM)'s current operation causes interference to television reception in the city of Wickenburg. Circle states its response to the Commission clearly demonstrated that any interference received is not occasioned by the KMEQ(FM) operation. Circle contends that in light of the above, Vulture's petition should be summarily denied.

6. *Discussion.* After careful consideration of the pleadings filed in this proceeding, we find that Vulture's petition for reconsideration should be denied. First, Vulture has not met the requirements of Section 1.429 of the Commission's Rules for introducing new matter in a petition for reconsideration. Specifically, Section 1.429 permits reconsideration based on facts not previously presented to the Commission under certain circumstances. However, none of these circumstances is present here. Vulture has not shown why these letters could not have been obtained earlier through the exercise of ordinary diligence. Also, it has not shown that the facts relied on relate to circumstances which have changed since the last opportunity to present them to the Commission. See 47 C.F.R. § 1.429(b)(1) and (2).²

7. Second, even if we were to consider the letters, they would not change our analysis of the interference issue. While these letters attempt to demonstrate that Station KMEQ(FM), at its current tower, causes interference on television channels 8 and 10 in Wickenburg, this is not relevant to what is at issue in this rulemaking proceeding -- whether or not to substitute an upgraded FM channel for Circle at a new site. On the contrary, allegations of inter-

¹ 9 FCC Rcd 2308 (Allocations Br. 1994).

² Circle also argues that the petition should be summarily dismissed pursuant to Section 1.52 of the Commission's Rules since the pleading is not verified. Circle notes that the petition is signed by Alan C. Torgerson, "Coordinator," a non-attorney.

We will not, however, dismiss Vulture's petition for lack of verification. While Section 1.429 of the Commission's Rules provides that petitions for reconsideration shall conform to the requirements of Sections 1.49 and 1.52, it specifically states that they "need not be verified." See 47 C.F.R. § 1.429(h).

ference from a station's current operations are more appropriately considered as complaints to the Mass Media Bureau's operating branches.³

8. As to alleged interference on television channels 8 and 10 that may occur by Circle's implementing its upgrade at a new site, its argument remains speculative. Vulture has not demonstrated that objectionable interference will occur at this new site. Indeed, we note that the new site is located 11.2 kilometers southwest of Circle's current transmitter site and that a different channel will be utilized, which may tend to lessen or alleviate interference concerns by the Vulture homeowners.

9. Further, even if the alleged interference were to occur at the new site, we note that

[t]he Commission has generally held that interference to television reception caused by FM stations is not a matter taken into account in assigning FM channels. Rather the problem can be more effectively dealt with in connection with the filing of an application for the FM station. See *Policy to Govern the Change of FM Channels to Avoid Interference to Television Reception*, (FCC 66-106), 6 RR 2d (1966). In the past certain measures such as traps and filters have been effective in solving the problem. But the extent of the problem is not known until a specific proposal is before the Commission.⁴

Consistent with this approach, any interference problems that may occur could be considered in connection with Circle's application to implement its upgrade.

10. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by Vulture Peak Restoration Group IS DENIED.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 776-1660.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

³ We note that the letters submitted by Vulture in support of its petition for reconsideration indicate that the alleged interference can be remedied by television viewers through the installation of traps and filters. Similarly, FM licensees are obligated to

remedy complaints of blanketing interference in areas close to a transmitting antenna. 47 C.F.R. § 73.318(b).

⁴ *Columbia and Monroe City, MO*, 48 RR 2d 1555.